

ASSEMBLY BILL

No. 1979

Introduced by Assembly Member Wiggins

February 12, 2004

An act to amend Section 1916.5 of the Civil Code, relating to lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 1979, as introduced, Wiggins. Lending: variable interest.

Existing law requires a lender, other than a supervised financial institution, to set forth provisions for variable interest rates in security documents and evidence of the debt that are issued in this connection and to include specified provisions in these documents regarding variable interest rates. Existing law defines a supervised financial institution, in this regard, as a state or federally regulated bank, savings association, savings bank, or credit union, or state regulated industrial loan company, personal property broker, consumer finance lender, or holding company, affiliate, or subsidiary of these entities, or an institution of the Farm Credit System.

This bill would revise the definition of supervised financial institutions, as described above, by adding residential mortgage lenders and broadening the description of finance lenders.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1916.5 of the Civil Code is amended to
2 read:



1 1916.5. (a) No increase in interest provided for in any
2 provision for a variable interest rate contained in a security
3 document, or evidence of debt issued in connection therewith, by
4 a lender other than a supervised financial organization ~~shall be~~ *is*
5 valid unless that provision is set forth in the security document, and
6 in any evidence of debt issued in connection therewith, and the
7 document or documents contain the following provisions:

8 (1) A requirement that when an increase in the interest rate is
9 required or permitted by a movement in a particular direction of
10 a prescribed standard an identical decrease is required in the
11 interest rate by a movement in the opposite direction of the
12 prescribed standard.

13 (2) The rate of interest ~~shall~~ *may not* change ~~not~~ more often than
14 once during any semiannual period, and at least six months shall
15 elapse between any two changes.

16 (3) The change in the interest rate ~~shall~~ *may not* exceed
17 one-fourth of 1 percent in any semiannual period, and ~~shall~~ *may*
18 not result in a rate more than 2.5 percentage points greater than the
19 rate for the first loan payment due after the closing of the loan.

20 (4) The rate of interest ~~shall~~ *may not* change during the first
21 semiannual period.

22 (5) The borrower is permitted to prepay the loan in whole or in
23 part without a prepayment charge within 90 days of notification of
24 any increase in the rate of interest.

25 (6) A statement attached to the security document and to any
26 evidence of debt issued in connection therewith printed or written
27 in a size equal to at least 10-point bold type, consisting of the
28 following language:

29 NOTICE TO BORROWER: THIS DOCUMENT CONTAINS
30 PROVISIONS FOR A VARIABLE INTEREST RATE.

31 (b) (1) This section shall be applicable only to a mortgage
32 contract, deed of trust, real estate sales contract, or any note or
33 negotiable instrument issued in connection therewith, when its
34 purpose is to finance the purchase or construction of real property
35 containing four or fewer residential units or on which four or fewer
36 residential units are to be constructed.

37 (2) This section ~~shall~~ *does* not apply to unamortized
38 construction loans with an original term of two years or less or to
39 loans made for the purpose of the purchase or construction of
40 improvements to existing residential dwellings.

(c) Regulations setting forth the prescribed standard upon which variations in the interest rate shall be based may be adopted by the Commissioner of Financial Institutions with respect to savings associations and by the Insurance Commissioner with respect to insurers. Regulations adopted by the Commissioner of Financial Institutions shall apply to all loans made by savings associations pursuant to this section prior to January 1, 1990.

(d) As used in this section:

(1) "Supervised financial organization" means a state or federally regulated bank, savings association, savings bank, or credit union, or state regulated industrial loan company, personal property broker, ~~consumer~~ finance lender, *residential mortgage lender*, or holding company, affiliate, or subsidiary thereof, or institution of the Farm Credit System, as specified in 12 U.S.C. Sec. 2002.

(2) "Insurer" includes, but is not limited to, a nonadmitted insurance company.

(3) "Semiannual period" means each of the successive periods of six calendar months commencing with the first day of the calendar month in which the instrument creating the obligation is dated.

(4) "Security document" means a mortgage contract, deed of trust, or real estate sales contract.

(5) "Evidence of debt" means a note or negotiable instrument.

(e) This section shall be applicable only to instruments executed on and after the effective date of this section.

(f) This section ~~shall~~ *does* not apply to nonprofit public corporations.

(g) This section is not intended to apply to a loan made where the rate of interest provided for is less than the then current market rate for a similar loan in order to accommodate the borrower because of a special relationship, including, but not limited to, an employment or business relationship, of the borrower with the lender or with a customer of the lender and the sole increase in interest provided for with respect to the loan will result only by reason of the termination of that relationship or upon the sale, deed, or transfer of the property securing the loan to a person not having that relationship.